SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
MAR 8 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964

No. 827

CHASE CAPITAL CORPORATION, dba QUAIL VALLEY COUNTRY CLUB, *Petitioner,*

vs.

A. J. BUMB, receiver-trustee for CHASE CAPITAL CORPORATION, a debtor-bankrupt, *Respondent.*

ANSWER TO OPPOSITION OF RESPONDENT

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To the Honorable Chief Justice Earl Warren and to the Honorable Associate Justices of the Supreme Court of the United States:

In their opposition to granting a petition for certiorari, respondent has stated:

> "The present counsel for the petitioner to this court, filed a like Petition for Writ of Certiorari following the making of an Order of Adjudication in a Chapter XI Plan of Arrangement proceeding in 1948 (Trans-Pacific Corporation v. Goggin, Pe-

tition for Writ of Certiorari. Order of Adjudication affirmed by United States Court of Appeals for the Ninth Circuit, 166 F. 2d 1021)."

Respondent did not call attention of this Court to the fact that the only issue therein apparently raised was the right of a jury trial in a Chapter XI proceeding, nor did he cite the case on which the Circuit Court affirmed, to-wit: *In re Trans-Pacific Corporation,* 76 Fed. Supp. 623.

The district court, in respect to the question of the right of a jury trial, said:

"The question involved is unique. The power of the bankruptcy court to dismiss the proceedings or judge the debtor a bankrupt within its sole discretion and without the aid of a jury's findings has not heretofore been attacked in the reported cases."

This points up the great importance of this question which has not been passed upon by this Honorable Court. Denial of certiorari is not a determination of the issue. Nor was the situation in the *Trans-Pacific* case similar to the one here where there are in excess of 500 stockholders who have received no notice of what would be done with the property in which they have at least a stockholder's interest, nor have the land owners who have purchased real estate in connection with the operations of Chase Capital Corporation, dba Quail Valley Country Club. The Trans-Pacific Corporation did not sell or have real estate for sale to a number of land owners who received no notice of the proceedings and whose property is now being held summarily by the bankruptcy court so that they cannot sell it, loan as against it or transfer it, all without notice and without an opportunity to be heard.

Very evidently this hiatus in the bankruptcy law and procedure requires full consideration and supervisory procedure by this Honorable Court, all of which matters have been ignored by the respondent in his answer.

Also, the answering petition is signed by "Thomas S. Tobin, attorney for A. J. Bumb, receiver-trustee, Respondent," and not by any attorneys of record who have appeared in the proceedings heretofore and who are named or listed as attorneys of record either in the bankruptcy court or in the Court of Appeals for the Ninth Circuit.

In *Silver v. New York Stock Exchange,* 373 US 341, 10 L. ed. 2d 389 at 440, this Court said, in reference to dealings on the Stock Exchange and in reference to the Securities Exchange Act:

> "Congress in affecting a scheme of self regulation designed to insure fair dealings cannot be thought to have sanctioned and protected self-regulative activity when carried out in a fundamentally unfair manner. The point is not that the anti trust laws impose the requirement of notice and a hearing, but rather that in acting without according petitioners these safeguards in response to their request the Exchange has plainly exceeded the scope of its authority . . ."

A footnote to this opinion is the following:

> "The basic nature of the rights which we held to be required under the anti trust laws in today's decisions is indicated by the fact that public agencies, labor unions, clubs and other associations have, under various legal principles, all been required to accord notice, a hearing, and an opportunity to answer charges to one who is about to

be denied a valuable right. *Goldsmith v. U.S. Board of Tax Appeals,* 270 US 117, 70 L. ed. 494" and a number of other cases and texts cited there.

We submit that Congress, in affecting a scheme in the bankruptcy court for rehabilitation of corporations or bankruptcy proceedings, designed to insure fair dealing, did not intend these sections to be carried out, to use the language of the *Silver* opinion, in "a fundamentally unfair manner."

It certainly is unfair to the stockholders of Chase Capital Corporation and to the investors in land who have bought the land on time payments, and to trust deed holders, not to have notice and an opportunity to be heard on a summary declaration of bankruptcy which could divest them of any interst in their property, the total sum of which has been appraised in excess of $5,000,000.

It is very important that this Court grant a hearing in order that the fundamental issue of due process of law guaranteed by the Fifth Amendment to the Constitution of the United States be recognized and observed in Chapter XI proceedings in bankruptcy and that these people all be deemed interested parties, entitled to notice and a hearing before such an adjudication.

We therefore move to strike the opposition brief filed on the ground that it is not filed by an attorney who heretofore has appeared by or on behalf of the receiver-trustee in any of the court proceedings so far.

Respectfully submitted,

MORRIS LAVINE,
Attorney for
Chase Capital Corporation.